

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

James Ford Jr., Oscar Lucas, Michael Cumberbatch,	:	Index No.: _____-2011
Paula Garcia, Gonzalo A. Gonzalez, Gleb Yentus	:	
Juan C. Londono, Johnny Gedeon, Mark Mc Gregor	:	Complaint and Jury Demand
Enilolobo Malika Oyo, Agnes Hui, Maria Hui,	:	
Francia Lambert, Jakiem Mc Lean, Jose Martinez,	:	Venue is based on the location of
Andrey Kan, Gabby Sappington, Maxim Fortun,	:	the event giving rise to this action
Yekaterina Barbash, Tiffany Atkinson, Nick Robbins	:	
Robert Powers.	:	
Plaintiffs,	:	
vs.	:	
New York City Transit Authority,	:	
Defendant	:	

Introduction

The above named New Yorkers hereby proclaim that as proud citizens of the great City of New York, they bring this lawsuit against the NYCTA in an effort to seek justice and gain a policy that will benefit the public now and for years to come. If these goals are accomplished, it will reaffirm the City of New York's great stature in the world by assuring that the Defendant will provide and maintain a safe and dependable transit system.

Defendant's failures led to a train full of passengers being stranded in freezing temperatures at an above ground station for without heat, bathrooms, food or water for approximately 8 hours. The conductor refused to let the citizens off the train resulting in a deplorable imprisonment. The Defendant promised that help would arrive, but no help

was sent. When the train was finally moved, the passengers were offloaded at the next stop, in the freezing cold, with about 3 feet of snow on the ground. No medical services, blankets, or assistance of any kind were provided at that station. The MTA made the passengers wait approximately an hour in the freezing cold until the next train arrived. As a result of Defendant's actions and inaction, some of the Passengers were without critical medication, hospitalized, lost time off from work, or were not able to care for loved ones for which they were responsible.

For the last year, each Passenger met with the Defendant and told their harrowing stories to the Defendant. Defendant nonetheless refused to agree to develop a policy to prevent this disaster from happening again. The Passengers thus have no choice but to pursue legal action to force the Defendant to implement new safety procedures. The Aboushi Law Firm is proud to represent these citizens pro-bono in their pursuit of justice and meaningful policy change.

The Forgotten Train

1. On or about December 26, 2010, the day after Christmas, Defendant invited the Passengers on to an A train located in the County of Queens headed into Manhattan.
2. At about 10 p.m. at the aqueduct station, the train stopped moving.
3. The train was still at the elevated platform.
4. The conductor refused to open the doors and let the Passengers off the train.

5. The conductor promised the passengers that help was on the way.
6. In fact, no help was on the way and the passengers were going to be in the car for the better part of 8 hours.
7. Immediately after the train stopped, the heat stopped working in the train.
8. After about an hour, the conductor told the passengers in the 5 car-train to congregate into one car.
9. The purpose of having all the passengers in one car was to use the collective bodies as heat for the passengers.
10. Because of the amount of people on the train, many people in the car had to stand or sit on the frozen car floor.
11. After a few hours, frost began to develop inside the train and inside of the train's windows.
12. There was no water or resources provided to the passengers.
13. Passengers having to use the bathroom were instructed by the conductor to relieve themselves in between the train cars.
14. Many people on the train urinated on themselves, in between the train, or in other cars.
15. Some people defecated in the train.

16. At all times during the ordeal, Passengers called 911 and the MTA.
17. 911 told the Passengers that it was an MTA issue and to call the MTA.
18. MTA told the Passengers to call 911 for assistance.
19. The conductor of the train told the passengers that MTA headquarters were not responding because of a “political” issue.
20. Many of the passengers were without crucial medication.
21. There was no food or water available for the Passengers.
22. The Defendant had access to the train, but refused to provide food, water, or blankets.
23. Throughout the ordeal, the Defendant refused to let the Passengers off the train.
24. On December 27, 2010 at about 8 a.m., the train moved to the next stop.
25. The Passengers were told to get off the train and wait for the next train.
26. Despite knowing that the Passengers were stuck in a horrific environment for about 8 hours, Defendant did not have any medical or emergency responders waiting for the weary Passengers.
27. Defendant did not provide any food, water, or blankets for the Passengers at this stop.

28. Moreover, the platform where the Passengers were offloaded was not shoveled, and the Passengers had to wait in the un-shoveled platform for the next train.
29. Two trains with passengers passed by the Passengers.
30. A third train finally stopped and picked up the Passengers.
31. The third train arrived about 45 minutes after the Passengers were offloaded.
32. Many of the Passengers became sick after the incident, including developing an pneumonia, flu, and colds.
33. Several Passengers sought medical treatment as a result of Defendant's actions.
34. Many of the Passengers suffered mental distress as a result of Defendant's conduct.
35. Each passenger met with the Defendant over the last year to tell their story to the Defendant, during which the passengers and Aymen A. Aboushi told the Defendant that they wanted the MTA to develop a policy to prevent this catastrophe from happening again.
36. At each meeting, the Defendant insisted that it did nothing wrong and that the passengers being trapped was an act of god outside the defendant's control.

37. On December 6, 2011, however, Thomas F. Prendergast, president of New York City Transit, finally admitted that “[w]e forgot about that train” and admitted that such negligence was “inexcusable.”

38. Passengers file a timely notice of claim with Defendant.

39. Each Passenger was deposed by the Defendant pursuant the 50-H requirement of the General Municipal Law.

40. James Ford Jr. and Oscar Lucas are residents of Queens County, New York.

41. Michael Cumberbatch, Paula Garcia, Gonzalo A. Gonzalez, Juan C. Londono, Enilolobo Malika Oyo, Agnes Hui, Maria Hui, Gleb Yentus, Johnny Gedeon, Mark Mc Gregor, Francia Lambert, Jakiem Mc Lean are residents of Kings County, New York

42. Jose Martinez is a resident of Bronx County, New York.

43. Andrey Kan, Gabby Sappington, Maxim Fortun, Yekaterina Barbash, and Tiffany Atkinson are residents of New York County, New York.

44. Nick Robbins and Robert Powers are residents of New Jersey.

45. Claimants are collectively referred to herein as “New Yorkers” and/or “Citizens” and/or “Passengers”

46. Defendant NYCTA has is a municipal entity with its headquarters located in Brooklyn, NY.

Count I-False Imprisonment

47. Citizens repeat each and every allegation in this Complaint as if asserted herein.

48. Defendant caused passengers to be trapped in a subway car for hours, without heat or any basic needs.

49. When the passengers began to freeze, the Defendant instructed the passengers to all huddle closely in one train car to preserve body heat.

50. As a result, almost all of the passengers in the 5 car train were crammed into one car.

51. There was not enough seats for the passengers and many had to stand for the entire ordeal or sit on the wet and frozen floor.

52. Despite the fact that the train was still at the station, Defendant refused to open the car doors and let the passengers off the train.

53. At all times the passengers were conscious of their confinement.

54. The passengers confinement was not privileged under the law.

Count II. Negligence

55. Citizens repeat each and every allegation in this Complaint as if asserted herein.

56. The Defendant committed negligence by failing to properly plan for the eventuality it knew was coming.

57. The Defendant invited the passengers on to the train and took their money full well knowing a storm was coming and they were having problems with operating trains.

58. Nonetheless, Defendant took the passengers' money for a service they knew they could not provide.

59. The Defendant was also negligent in that it failed to properly maintain the train and tracks, which caused the train to breakdown.

60. The Defendant was also negligent in that it failed to let the passengers off after it knew that the train was not working and that no heat would be available to the passengers.

Count III. Failure to Rescue

61. Citizens repeat each and every allegation in this Complaint as if asserted herein.

62. For many agonizing hours, the Defendant told the passengers that it would rescue them.

63. As a result, the passengers waited for hours in the freezing cold, without food, water, or a bathroom, for the Defendant to rescue them.

64. The Defendant failed to rescue the passengers as promised.

65. The passengers relied on Defendants promise to rescue them to their detriment.

Count IV. Failure to Plan

66. Citizens repeat each and every allegation in this Complaint as if asserted herein.

67. The Defendant knew, or should have known that the inclement weather would be approaching.

68. Almost every media outlet in the City was reporting on the weather.

69. Nonetheless, the Defendant failed to plan for the weather, and the care of the passengers in its custody during the weather.

70. The innocent passengers paid the price for Defendant's failure to plan by being stuck for almost 12 hours, on a freezing train, with no recourses, bathroom, heat, or water.

Count V. Failure to Train and Supervise

71. Citizens repeat each and every allegation in this Complaint as if asserted herein.

72. The citizens acknowledge that the vast majority of NYCTA rank and file employees are competent and perform their jobs well.

73. Indeed, this lawsuit against will undoubtedly strengthen their ability to perform their jobs by requiring management to provide them the tools, procedures, and training they need to perform their job functions.

74. To that end, it is clear that the Defendant failed to properly train and supervise its employees during the incident.

75. Defendant's failure to train and supervise its employees resulted in their employees being unprepared for the incident and exacerbated the situation of the trapped Passengers.

76. Defendant's failure resulting in the treacherous situation described above.

Prayer for Relief

WHEREFORE, Passengers seek that the Defendant be made to develop a comprehensive policy to prevent this disaster from happening, which includes developing a response and protocol procedure to mobilize first aid, having the red-cross respond to assist passengers, providing blankets, food and water, as well providing the ability to communicate to family members and worried loved-ones, and judgment against the Defendant for an amount to be determined by a jury of citizens' peers, actual and punitive damages, and any other relief that Court deems just and proper.

Dated: December 27, 2011



The Aboushi Law Firm, PLLC

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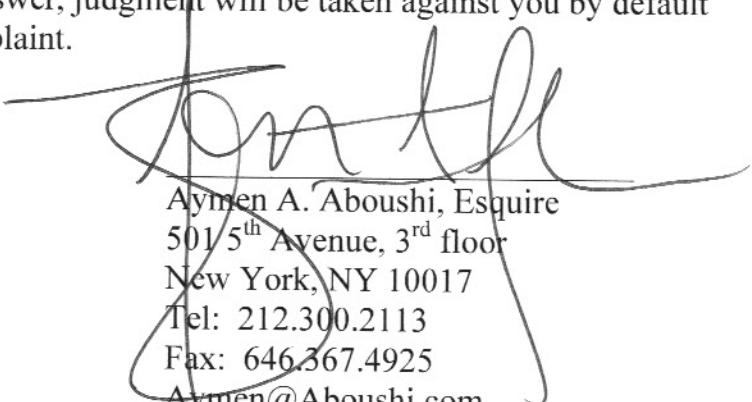
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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: December 27, 2011


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